



House Appropriations Committee
December 2, 2015

Medical Parole Bills
HB 5078-5081

The problem of aging prisoners is not unique to Michigan. A growing number of national and state reports describe how the “tough on crime” policies of the last several decades have filled prisons with people who are extremely low risk but costly to keep as they develop the health problems we all face as we age. However, Michigan has an especially large and ever-increasing number of older prisoners because we impose a lot of very lengthy sentences and have an exceptionally long average length of stay. In 2013, nearly 8,500 prisoners – 19 percent of the population – were age 50 or older; nearly 1,200 were 65 or older. This proportion will inevitably continue to grow, as will spending on their medical care.

Aging prisoners are not, of course, the only ones with serious medical problems. Anyone, regardless of their age, their offense or the length of their sentence can develop cancer or heart disease or other debilitating illnesses that require extensive and expensive treatment.

In the past, the parole board had the authority to grant medical paroles to people who were physically or mentally incapacitated. The enactment of “truth in sentencing” legislation that requires every person to serve every day of his or her minimum sentence in a secure facility ended the practice. As a result, the only route to release was through the long and politically difficult process of commutation.

CAPPS has long advocated the re-enactment of medical paroles. We are grateful to Reps. Pscholka and Pagel for taking the lead in restoring the ability of the board to do what is safe, compassionate and cost-effective on a case-by-case basis. HB 5078, 5079 and 5080 establish an excellent process:

- They define “medically fragile” in a realistic way that allows the board to address various disabilities while keeping the potential threat to society as the core consideration.
- They provide for appropriate involvement by prosecutors and victims.
- They do not require public hearings so that people who are infirm, in pain or incapable of remembering what they’ve done can be questioned about their crimes.
- They define “medical facility” with sufficient flexibility to allow for the placement that is most suitable for the individual parolee.
- They ensure that people remain under supervision until they reach what would have been their earliest parole date for the sentence they are serving.
- They require that people who have been released continue to meet the criteria for a medical parole unless they have otherwise become eligible for parole.

- They protect the safety of vulnerable, medically fragile parolees by requiring the board to monitor their condition and by requiring any medical facility used by the Department to ensure the safety of its residents.

We recognize that a driving factor behind the bills is the desire to save medical costs in the corrections budget by transferring prisoners to settings where they can draw on various health care benefits, public and private. In fact, the costs go beyond those that are directly related to delivering health care. To the extent that prisoners are transported offsite to receive specialized care, there is substantial expense for transportation and security. And beyond that there are the routine security costs of operating a prison. Even a few hundred beds make a difference, independent of extraordinary medical costs. The MDOC estimates that every 160 beds eliminated permit the closing of a housing unit at a cost savings of \$2,628,000.

But cost-savings are not the only reason to enact these bills. Our prisons are not designed to be nursing homes. It is difficult for medically fragile prisoners to get to chow, to keep a job and to protect themselves from being taken advantage of by younger prisoners who may be manipulative or aggressive towards them. It is hard to follow orders if you can't walk fast enough or hear well enough or toilet quickly enough to comply. More and more the Department has to make accommodations for people who can't reach a top bunk or dress without assistance or breathe without oxygen. And certainly our prisons were not intended to house those who are suffering from such severe dementia that they do not even know they are being punished or why.

Whether we believe the purpose of prison is punishment or crime prevention, we gain nothing from locking up people who are long past doing any harm to anyone else. We lose nothing by allowing people to spend their last years or months in facilities where they can have their medical needs met and maybe even see their families a little more. These bills allow us to apply common sense and avoid incarceration that is both pointless and cruel.

While we strongly support HB 5078, 79 and 80, we oppose HB 5081, which would make it a one-year misdemeanor for someone to aid or assist a parolee in leaving or attempting to leave a facility in which the parolee has been placed as a condition of a medical parole. It is unclear why we even need to fear that people will try to spirit medically fragile parolees out of their nursing homes. But the extremely broad language of this bill is certainly not the answer. There is no requirement of intent to violate the conditions of parole. Read literally, the bill would make it a crime for nursing home staff to take a parolee offsite to a hospital or doctor's appointment. It would also be a crime for a family member to innocently and temporarily take a parolee home for a holiday meal, even if that did not violate the rules of the medical facility. Notably, for the parolee, leaving the facility could in itself be a violation of a supervision rule but not a crime.

By criminalizing the act of, wittingly or unwittingly, aiding a parolee to violate a condition of parole, HB 5081 opens the door to world of possibilities for turning law-abiding citizens into criminals. There would be no reason to stop with medical paroles. The next step would be to make it a misdemeanor to help any parolee violate any condition of parole, like disregarding a curfew or changing an address or missing a meeting with a parole officer or a treatment provider. One can imagine many ways in which a friend or family member could inadvertently facilitate these violations, for instance, by giving the parolee a ride to Place A when she was supposed to be at Place B.

It is the parolee's responsibility to abide by the conditions of his or her parole. HB 5078 makes it clear that violating the conditions of a medical parole will result in a return to prison. That consequence should provide both parolees and their loved ones with sufficient incentive to insure compliance.